

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHEET METAL WORKERS LOCAL 265)	
WELFARE FUND, <i>et al.</i> ,)	
)	
Plaintiffs,)	CIVIL ACTION
)	
vs.)	NO. 18 C 2081
)	
DYNAMIC AIR SOLUTIONS, LLC, an Illinois)	JUDGE JOHN J. THARP, JR.
limited liability company,)	
)	
Defendant.)	

**PLAINTIFFS' MOTION TO REOPEN CASE FOR
THE LIMITED PURPOSE OF ENFORCING THE
TERMS OF THE SETTLEMENT AGREEMENT AND ENTERING
JUDGMENT AGAINST DEFENDANT AND KIPP SOBIESKI**

NOW COME Plaintiffs, SHEET METAL WORKERS LOCAL 265 WELFARE FUND, *et al.*, by their attorneys, and move the Court for the entry of an order reopening this action for the limited purpose of enforcing the terms of the Settlement Agreement entered into between the parties and filed with this Court on July 13, 2018. In support of the Motion, Plaintiffs state as follows:

1. This action was originally brought by the Plaintiffs, the Trustees of the jointly-administered, labor-management employee benefit plans collectively known as the Sheet Metal Workers Local 265 Fringe Benefit Funds, alleging, *inter alia*, that Defendant breached its obligations under the terms of the collective bargaining agreement entered into with SMART Local 265, and the Agreements and Declarations of Trust under which the Plaintiff Funds are maintained. Specifically, Plaintiffs allege that Defendant failed to remit payment of contributions for work performed on its

behalf by beneficiaries of the Plaintiff Funds. The Complaint was brought pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1132, 1145.

2. On July 13, 2018, a Notice of Dismissal incorporating the Settlement Agreement and Promissory Note was filed with this Court (a copy of the Notice of Dismissal and Settlement Agreement and Promissory Note attached thereto is attached as Exhibit 1).

3. On July 16, 2018, this Court dismissed this cause of action pursuant to the parties' Notice of Dismissal (a copy of the Court's Notification of Docket Entry dated July 16, 2018 is attached as Exhibit 2).

4. Defendant agreed that it owed the total amount of \$12,813.00 for contributions, \$1,281.30 for liquidated damages, and \$1,916.75 for attorneys' fees and costs, for the contribution months of August 2017 through November 2017, as described in Paragraphs 3 and 4 of the Settlement Agreement.

5. Plaintiffs agreed to reduce the liquidated damages due from Defendant by one-half to \$651.29. Accordingly, the parties agreed Defendant would pay Plaintiffs \$15,381.04 over a period of 15 months pursuant to the Promissory Note attached to the Settlement Agreement.

6. Defendant also agreed to remain current with respect to the submission of monthly contribution reports and the payment of fringe benefit contributions due throughout the period of the payment schedule.

7. Paragraph 7 of the Settlement Agreement further provides that if Defendant fails to timely submit the payments set forth in the Promissory Note or fails to submit current reports and contributions as they become due during the payment schedule, Defendant would be considered in default of the Settlement Agreement. The Plaintiffs would be entitled to file a motion with the court

to reinstate the case for the limited purpose of entering judgment against Defendant and Kipp Sobieski for all unpaid installments including \$651.29 for the waived liquidated damages and the Plaintiffs' attorneys' fees and costs incurred as a result of filing suit, pursuing a motion for default judgment and enforcement of the Settlement Agreement.

8. In the event of Defendant's breach of the terms of the Settlement Agreement and Promissory Note, Plaintiffs' counsel would notify Defendant's counsel, in writing, of the breach and if within five (5) business days Defendant has not cured the breach, the Plaintiffs would be entitled to move the Court to enforce the Settlement Agreement and request that judgment be entered against Defendant and Kipp Sobieski for the balance due on the Promissory Note and any additional costs and reasonable attorneys' fees that become due and owing during the term of the Promissory Note.

9. On July 9, 2019, Plaintiffs' counsel sent Defendant's counsel a letter by both email and U.S. Mail regarding the failure of the Defendant to abide by the terms of the Settlement Agreement and Promissory Note (a copy of the July 9, 2019 letter from Plaintiffs' counsel to Defendant's counsel is attached hereto as Exhibit 3).

10. Defendant has not submitted the 13th and 14th installments due on June 28, 2019 and July 26, 2019 pursuant to the terms of the Settlement Agreement and Promissory Note.

11. For all the reasons stated, the Plaintiffs hereby move the Court for the entry of an Order reopening this action for the limited purpose of enforcing the terms of the Settlement Agreement and Promissory Note and entering judgment against the Defendant and Kipp Sobieski. Specifically, Plaintiffs request:

- A. That judgment be entered in favor of Plaintiffs and against Defendant, Dynamic Air Solutions, LLC, and Kipp Sobieski, to include the amount of \$2,127.84, being the total amount remaining due for contributions, liquidated damages, and attorneys' fees

and costs for the time period August 2017 through November 2017 pursuant to the Settlement Agreement and Promissory Note.

- B. That judgment be entered in favor of Plaintiffs and against Defendant, Dynamic Air Solutions, LLC, and Kipp Sobieski, to include the amount of \$651.29, being the amount of liquidated damages that was previously waived by Plaintiffs.
- C. That judgment be entered in favor of Plaintiffs and against Defendant to include \$3,035.75 in attorneys' fees incurred by the Plaintiffs in this litigation.
- D. That Plaintiffs have such further relief as may be deemed just and equitable by the Court.

/s/ Cecilia M. Scanlon _____

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on or before the hour of 4:00 p.m., this 5th day of August 2019, she electronically filed the foregoing document (Motion to Reopen Case) with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Mr. Joshua D. Holleb
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/s/ Cecilia M. Scanlon _____

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